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JUITA LATIP

v.

ABDUL WAHAB JONG & ANOR

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HIGH COURT SABAH & SARAWAK, SIBU
YEW JEN KIE J
[CIVIL APPEAL NO: 12B-13-2009]
25 JUNE 2010

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CIVIL PROCEDURE: *Parties - Substitution of parties - Substitution of personal representative - Appellant substituted as plaintiff in fatal accident suit before extraction of letters of administration in appellant's name - Failure of respondent to object to substitution - Substitution done urgently due to threat that suit will be struck off - Whether appellant had locus standi to represent deceased's estate - Whether suit should be struck out for want of authority -*

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Whether doctrine of relation back applicable - Whether acts were for benefit of estate - Whether respondents estopped from disputing appellant's authority

PROBATE AND ADMINISTRATION: *Administrators - Authority of - Authority to represent estate of deceased before extraction of letters of*

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administration - Appellant substituted as plaintiff in fatal accident suit before extraction of letters of administration in appellant's name - Whether appellant had locus standi to represent deceased's estate - Whether suit should be struck out for want of authority

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Norida binti Bompery ('deceased') was the appellant's daughter who had died in a fatal accident. The deceased's father, Bompery bin Boll was appointed as administrator of the deceased's estate. He commenced this action against the respondents. Subsequently, Bompery bin Boll died. Due to the threat that the action would be struck off if the plaintiff was not substituted by the next mention date, the appellant applied to

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substitute herself as a plaintiff in the action even though she was yet to be issued with the letters of administration ("LA"). The application was allowed without any objection from the defendant. However, subsequently, the respondent framed two questions for the court's determination, namely: (i) whether the appellant had the *locus standi* to

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represent the deceased's estate when she was yet to be issued with the LA; and (ii) whether the action should be struck out for want of authority. The Sessions Court allowed the defendant's application to strike out the action on the ground that the appellant had no *locus standi* and for want of authority. Hence, the present appeal by the appellant.

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Held (allowing appeal):

(1) In the case of intestacy, the administrator's authority stems from the grant of LA. Until the grant is obtained, the administrator has no authority to act on behalf of the estate. However, certain acts of the administrator may be held valid by the application of the doctrine of relation back. These acts should be for the benefit of the estate. (paras 12 & 13)

(2) The appellant had yet to obtain the LA at the time the amendment application was made. This was not because the appellant was inactive. The appellant had taken steps to apply for it and the application was pending. Since the dismissal of the appellant's claim, the appellant had obtained the LA. (para 7)

(3) As the amendment was done for the benefit of the estate and to protect their interest, by the application of the doctrine of relation back, the subsequent appointment of the appellant as administrator related back to validate her action in applying to amend the summons to substitute herself for the plaintiff in the place of Bompery bin Boll. (para 17)

(4) The respondent did not object to the amendment. The order was extracted and the amendment duly made. In the premise, the respondents were estopped from asserting that the appellant had no *locus standi* for want of authority to act for the estate of the deceased at the material time of the amendment application. (para 19)

Case(s) referred to:
Chor Phaik Har v. Farlim Properties Sdn Bhd [1997] 4 CLJ 393 FC ***(refd)***
Pacplas Property Services Pte Ltd v. Lee Peter Michael [2000] 2 SLR 637 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 14A
Subordinate Courts Rules 1980, O. 14 r. 1(a), (b), (c), O. 24 r. 1

Other source(s) referred to:
Halsbury's Laws of England, 4th edn, paras 735, 736, 330.266, p 310

For the appellant - Voon Lee Shan; M/s Voon & Co Advocates
For the respondent - Boris Jarop; William Ding & Co

Reported by Amutha Suppayah

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JUDGMENT

Yew Jen Kie J:

[1] This is the appeal by the appellant against the decision of the learned Sessions Court Judge in allowing the defendant's notice of
B application to strike out the appellant's claim on ground that the appellant has no *locus standi* for want of authority to act and/or to represent for and on behalf of the estate of the late Norida binti Bompery as the appellant has yet been issued with the letter of administration.

C **[2]** The appellant's daughter, the late Norida binti Bompery was involved in a fatal accident on 8 September 2006 that claimed her life. The late Bompery bin Boll, father of the deceased was appointed as a personal representative by grant of a letter of administration in the estate of the deceased.

D **[3]** The late Bompery bin Boll duly commenced the legal action against the respondents as administrator and the defendant resisted the claim.

[4] The late Bompery bin Boll met with an untimely death in
E December 2008.

[5] On 2 February 2009, the appellant's counsel informed the sessions court of the untimely demise of the late Bompery bin Boll and the pending application to the probate officer for a letter of administration to be issued to her in the estate of the deceased. The case was
F adjourned to 16 March 2009 for further mention.

[6] On 16 March 2009, the appellant's counsel informed the court that the application was still pending and prayed for further adjournment of thirty days. The defense counsel wanted the case to be struck out.
G The court told the appellant's counsel that the case would be struck out for want of prosecution if the plaintiff was still not substituted by the next mention date on 22 June 2009.

[7] Thereafter the appellant filed a notice of application to amend the summons and statement of claim by substituting herself as a plaintiff for
H the deceased in place of the late Bompery bin Boll. The application was allowed without any objection from the defendant. Trial was then fixed on 14 September 2009.

[8] The order to reflect the amendment granted was duly extracted
I with no objection from the respondents.

[9] By an application dated 3 September 2009 under O. 24 r. 1, O. 14 r. 1(a), (b), (c) Subordinate Courts Rules 1980 and O. 14A of the Rules of the High Court 1980, the respondent framed two questions for the court's determination, namely, (i) whether or not the plaintiff Juita

binti Latip has the *locus standi* or the lawful authority under the Civil Law Act 1956 in her present capacity to act and/or to represent for and on behalf of the estate of the late Norida binti Bompery when the said Juita binti Latip has yet to be issued with the letters of administration and (ii), that upon determination of the above question and if the decision is in favour of the 1st and 2nd defendants, the whole of the plaintiff's claims against the 1st and 2nd defendants is to be struck out with costs for want of authority.

[10] The court granted the order as prayed. Hence, this appeal.

[11] In my judgment, the learned Sessions Court Judge has fallen into error in so deciding and the appeal should be allowed. My reasons are as follows:

[12] In the case of intestacy, the administrator's authority stems from the grant of letter of administration. Until the grant is obtained, the administrator has no authority to act on behalf of the estate.

[13] However, certain acts of the administrator may be held valid by the application of the doctrine of relation back. These acts should be for the benefit of the estate.

[see, *Halsbury's Laws of England* (4th ed), paras 735 and 736, cited with approval in *Pacplas Property Services Pte Ltd v. Lee Peter Michael* [2000] 2 SLR 637 at p. 650; *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1997] 4 CLJ 393].

[14] Before probate, an executor may generally do all things pertaining to his office such as:

(i) Pay to release debts;

(ii) Get in or receive the testator's estate;

(iii) Assent to a legacy;

(iv) Intermeddle with the testator's goods;

(v) Detrain for rent;

(vi) Demise;

(vii) Make a conveyance or assignment of the deceased's assets;

(viii) Give a valid receipt for money payable upon an assignment;

(ix) Begin an action as executor before probate;

A (x) Present a petition in bankruptcy as executor or testator's creditor or to wind up a limited company before probate; and

(xi) Maintain an action in respect of property which he has been in actual possession.

B (see *Halsbury's Laws of England*, 4th edn, para. 330.266. p. 310).

[15] In this case it is common ground that the appellant had yet to obtain a letter of administration at the time the amendment application was made. This came about not because the appellant was inactive. On
C the contrary, the appellant had taken steps to apply for it and the application was pending in the Probate Office, Sarikei.

[16] It is undisputed fact that since the dismissal of the appellant's claim, the appellant had on 19 October 2009 obtained a letter of administration issued on 23 November 2009.

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[17] There is little doubt that the amendment sought was clearly done for the benefit of the estate of the deceased. It was done in good faith to protect and preserve the interest of the estate. Based on what transpired in court on 16 March 2009, the action faced the risk of being
E struck out for want of prosecution if the plaintiff was still not substituted by 22 June 2009. Hence, the amendment application by substituting herself for the plaintiff in place of the late Bompery bin Boll.

[18] As the amendment sought by the appellant was done for the benefit of the estate and to protect their interest, I am of the view that
F by the application of the doctrine of relation back, the subsequent appointment of the appellant as administrator related back to validate her action in applying to amend the summons and statement of claim to substitute herself for the plaintiff in the place of the late Bompery bin Boll.

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[19] It must be highlighted that the respondent did not object to the amendment. The order was extracted and the amendment duly made. In the premise, the defendants are estopped from asserting that the appellant has no *locus standi* for want of authority to act for the estate of the deceased at the material time of the amendment application.

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[20] For all the reasons stated above, I allowed the appeal with costs to the appellant to be taxed unless agreed.

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